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The scope and application of the principle of universal jurisdiction

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 65/33, by which the Assembly requested the Secretary-General to prepare a report on the basis of information and observations received from Member States and relevant observers, as appropriate, on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties, their domestic legal rules and judicial practice.

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I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 65/33. It takes into account the continuing relevance of the 2010 report (A/65/181), section II of which provided an overview of the variety of issues highlighted in the comments and observations of Governments. These issues, which focused mainly on the context of and rationale for universal jurisdiction, definitional considerations and the need to distinguish universal jurisdiction from certain other types of jurisdiction and certain concepts, were the subject of further comment in submissions received but have not been repeated in the present report.

2. In accordance with resolution 65/33, section II, together with tables 1, 2 and 3, focus on specific information on the scope and application of universal jurisdiction on the basis of relevant domestic legal rules, applicable international treaties and judicial practice. Section III provides information received from observers and section IV contains a synopsis of issues raised by Governments for possible discussion, together with views of observers.

3. Responses were received from Argentina, Azerbaijan, Bosnia and Herzegovina, Botswana, Colombia, Cyprus, El Salvador, Lebanon, Lithuania, Paraguay, the Philippines, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

4. Responses were also received from the following observers: the African Union, the Council of Europe, the International Labour Organization (ILO), the International Maritime Organization (IMO), the Organization for the Prohibition of Chemical Weapons and the International Committee of the Red Cross.[1]

5. Owing to internal controls to ensure strict compliance with General Assembly resolutions on word limits on parliamentary documents issued by the Secretary-General, an attempt has been made to condense the submissions received without affecting the substance. The short form "universal jurisdiction" is used throughout the report where submissions may have described it as "principle of" or "concept of". The complete replies are available from the website of the Sixth Committee under "Sixty-sixth session".

II. Scope and application of universal jurisdiction on the basis of the relevant domestic legal rules, applicable international treaties and judicial practice: comments by Governments

A. Basic legal rules

1. Constitutional and other domestic legal framework

Azerbaijan

6. Under article 12.3 of the Criminal Code, citizens of Azerbaijan, foreign nationals or Stateless persons who have committed crimes against peace and humanity, war crimes or certain other crimes (see table 1 of the present document),

[1] The observers advised that they had no information to submit have not been included in the present list and report.

and other crimes for which punishment derives from international agreements to which Azerbaijan is a party, are subject to criminal prosecution and punishment under the Code, regardless of where the crime was committed.

Bosnia and Herzegovina

7. Chapter III of the Criminal Code regulates the application of the criminal legislation of Bosnia and Herzegovina with respect to the offences committed outside its territory; it therefore also covers the application of universal jurisdiction. In accordance with article 9 of the Code, this legislation applies to anyone who, perpetrates, outside the territory of Bosnia and Herzegovina, certain offences (see table 1) or an offence which Bosnia and Herzegovina is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements.

Botswana

8. Botswana has ratified several treaties containing universal jurisdiction (see table III). However, only a few have been given domestic effect in national legislation. Botswana has a dualist system; any treaty to which it is a party and which provides for universal jurisdiction will not be recognized by the courts or have legal effect within Botswana if it has not been passed into law by an Act of Parliament. Although the absence of domestic legislation may not be invoked as an excuse for non-compliance with treaty obligations, the process is slow, partly owing to a lack of capacity and the inadequacy of resources, including with respect to gathering evidence.

9. Under section 3 of the Geneva Conventions Act (1970), any person, whatever his nationality, who, whether in or outside Botswana, commits ... any such grave breach of any of the scheduled conventions ... shall be guilty of an offence. Where an offence under section 3 is committed outside Botswana, the person may be indicted, tried and punished in any place in Botswana as if the offence had been committed within the country (see table 2).

Colombia

10. In the legislation of Colombia, there is no express provision concerning the application or existence of universal jurisdiction. However, Colombia is a party to various treaties which, in principle, provide for the exercise of national jurisdiction over certain acts that are contrary to international law, generally on the basis of a treaty obligation and the observance of customary international law.

11. Article 93 of the Constitution provides that international treaties and agreements ratified by Congress which recognize human rights and prohibit their restriction during states of emergency shall take precedence over domestic legislation. The rights and obligations enshrined in the Constitution shall be interpreted in accordance with the international human rights treaties ratified by Colombia. In addition, since the Constitution provides that no person shall be subjected to enforced disappearance or to torture or cruel, inhuman or degrading treatment or punishment and prohibits all forms of slavery, servitude and trafficking in human beings, it reflects the level and type of protection that the State must provide in order to suppress and punish, inter alia, violations of such rights, which also constitute international crimes; hence, it reflects the ability of Colombia, in principle, to exercise its jurisdiction in order to punish such acts and thereby safeguard the fundamental rights enshrined in the Constitution.

12. Moreover, criminal law recognizes the growing concern about the suppression of violations that seriously compromise human rights, a situation which the application of universal jurisdiction is intended to mitigate, on the understanding that universal jurisdiction enables States to prosecute and punish acts that are contrary to international law within the limits established in domestic law.

13. Thus, in accordance with the Colombian Constitutional Court, the Penal Code allows for the possibility of exercising extraterritorial jurisdiction in accordance with article 9 of the Constitution, which establishes that Colombia's foreign relations are based on, inter alia, the principles of international law accepted by Colombia, in particular universal jurisdiction.

14. The Constitutional Court has indicated that universal jurisdiction is a mechanism for international cooperation in combating certain activities which are repudiated by the international community and that it coexists with, but does not supersede, the ordinary jurisdictional competencies of States, as expressly stated in the treaties in which it is established.

15. Many of the crimes punished under domestic criminal law (especially violations of human rights and of international humanitarian law) (see table 1) are fully in line with crimes punished under international law and, thus, those acts can be prosecuted as crimes of international law; this not only makes it possible to extend national jurisdiction to include the exercise of universal jurisdiction, but also resolves the issue of *non bis en idem* since, in Colombia, express referral to domestic law (the Penal Code) is analogous to referral to an international instrument, which is why domestic courts have the jurisdiction and competence to prosecute such crimes without putting the individual in a situation of double jeopardy.

16. With regard to crimes that threaten the existence and security of the State (see table 1), domestic criminal legislation is clear about the ability to exercise universal jurisdiction. Crimes contained in title XVII of the Penal Code are subject to the jurisdiction and authority of domestic law, in line with international law, particularly as regards, inter alia, peace and security, autonomy, legal equality and integrity.

17. With regard to drug trafficking and the global drug problem, the Constitutional Court has indicated that, although there are treaties that regulate and penalize illicit drug trafficking, and several States in the international community (including Colombia) have argued that this crime should be linked to terrorism, armed groups and others responsible for violations of human rights and international humanitarian law, the penalization of the use and possession of narcotics is modified by the individual's freedom of personal development. Since a person's individual actions (such as the consumption and possession of narcotics in small or personal doses) do not necessarily constitute a serious crime, it may be argued that beyond the existence of universal jurisdiction over this offence, drug trafficking is essentially an offence against public health and not against international peace and security. It is therefore possible that, depending on the circumstances, the applicable principle would be *aut dedere aut judicare*.

Cyprus

18. Universal jurisdiction is applicable in Cyprus: (a) by virtue of the Criminal Code to certain prescribed crimes, such as piracy (see table 1), to offences for which

the laws of Cyprus are applicable by virtue of any binding international convention or treaty; and to offences whose one constituent element is an act or omission, the object of which is immovable property situated in Cyprus (see table 1); (b) by virtue of specific legislation on certain offences, such as crimes under the Rome Statute of the International Criminal Court (see table 2).

El Salvador

19. Universal jurisdiction is not provided for in Salvadoran constitutional law. However, it has been recognized in secondary legislation. Under article 10 of the Criminal Code, Salvadoran criminal law shall also apply to offences committed by anyone in a place not subject to Salvadoran jurisdiction, provided that they affect rights that are internationally protected by specific agreements or norms of international law or seriously violate universally recognized human rights. Thus, national criminal courts are authorized to investigate certain offences, regardless of where they were committed or of the nationality of either the perpetrators or the victims of the offences.

Italy

20. Italy exercises universal jurisdiction over crimes against international law. According to article 7 (5) of the Criminal Code, a foreigner who commits a crime abroad is punished under Italian law whenever this is provided for by special legislation or by international conventions.

21. Italy has also cooperated in the suppression of all serious crimes by adopting multilateral conventions, bilateral and multilateral extradition treaties and treaties providing for mutual legal assistance in criminal matters.

Lebanon

22. Lebanon reiterated that it was not a party to any treaties or agreements on universal jurisdiction. Lebanese law contains no provisions that could be interpreted as establishing universal jurisdiction (see A/65/181).

Lithuania

23. Article 7 of the Criminal Code of Lithuania applies universal jurisdiction only to crimes specified in treaties to which Lithuania is a party. However, article 7 has a wider scope in that it is possible to attribute criminal responsibility under the Code for a crime referred to in a particular treaty even if Lithuania is not a party to that treaty.

24. Moreover, under the provisions of paragraph 1, universal criminal jurisdiction is applied to the crimes specified under the Code, including genocide, to which no statute of limitations applies (see table 1), while paragraphs 2 to 11 of article 7 set forth additional crimes (see table 1).

Paraguay

25. Universal jurisdiction is incorporated into the domestic law of Paraguay. Article 8 of the Criminal Code, which concerns offences committed abroad in respect of legal assets enjoying universal protection, provides that Paraguayan criminal law shall apply to certain offences defined under the Code (see table 1) or under specified acts (see table 2) committed abroad and to offences that Paraguay is

required to prosecute under an international treaty currently in force, even when committed abroad.

26. Under the principle of territoriality established in article 6 of the Code of Criminal Procedure, Paraguay applies its criminal law to all offences committed in Paraguay or aboard Paraguayan ships or aircraft. Application of the principle of universal jurisdiction is a clear break with traditional application of the principle of territoriality and has been embodied in a series of international treaties (see table 3).

Philippines

27. The 1987 Constitution adopts the generally accepted principles of international law as part of domestic law. Thus, universal jurisdiction is considered part of Philippine law.

28. The general rule is that jurisdiction is territorial, and therefore universal jurisdiction is an exception, grounded in the imperative need to preserve international order. Article 2 of the Revised Penal Code stipulates that, except as provided for in the treaties and laws of preferential application, the provisions of the Code shall be enforced not only within the Philippines but also outside its jurisdiction, in respect of those who (a) commit an offence while on a Philippine ship or aircraft; (b) commit certain specified crimes (see table 1); (c) commit any of the crimes against national security and the law of the nation defined in Title I, Book II of the Code.

29. Universal jurisdiction has also been incorporated into local laws through the enactment of specific legislation, including the Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity (Act No. 9851) (see table 2), which (a) defines and establishes crimes against international humanitarian law, genocide and other crimes against humanity; (b) provides penal sanctions and criminal liability for their commission; and (c) establishes special courts for the prosecution of such crimes and for States to exercise primary criminal jurisdiction. Section 15 of the Act enumerates several treaties to be applied in its interpretation, namely (a) the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; (b) the four Geneva Conventions of 1949 and Additional Protocols I and II (1977) and Additional Protocol III (2005) thereto; (c) the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its Protocol and its Second Protocol (1999); (d) the 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the involvement of children in armed conflict; (e) the rules and principles of customary international law; (f) the judicial decisions of international courts and tribunals.

Qatar

30. National legislation, including the Penal Code, does not provide for universal jurisdiction, but in applying article 6 of the Qatari Constitution, which reads "[t]he State shall respect international pacts and execute all international agreements, pacts and treaties to which it is a party", Qatari criminal courts can have jurisdiction to hear cases concerning crimes committed outside Qatar, in accordance with conventions to which Qatar is a party and which cover these crimes, provided that the accused is present in its territory.

31. Article 17 of the 2004 Penal Code provides that its provisions ... are applicable to whoever is in the State after committing abroad, as a perpetrator or an accomplice, any crime of trafficking of drugs or persons, piracy or international terrorism (see table 1). This implies that prosecution and trial pursuant to the article require the presence of the perpetrator or accomplice in Qatar at the time a case is brought against them, and that a case cannot be brought if the perpetrator is not within Qatar.

Slovakia

32. The Criminal Code was amended in 2009 by Law No. 576/2009 Coll. The amendment, which entered into force as at 1 January 2010, introduced universal jurisdiction into section 5 (a) of the Criminal Code. The section applies when determining the liability for punishment for certain specified crimes (see table 1) even if those crimes were committed abroad by a foreign national with no permanent residence permit in Slovakia.

33. The existing provisions on extraterritorial jurisdiction of national courts contained in section 6 (a) and on the relationship to international treaties (section 7) were introduced into the Criminal Code in 2006.

34. Slovakia is party to the bilateral treaties and international legal instruments in force that contain or mention elements of the *aut dedere aut judicare* principle or that of universal jurisdiction (see table 3).

35. Universal jurisdiction in Slovakia may affect not only criminal court proceedings but also civil law and civil procedural legal rules. The criminal courts may invite victims who have incurred damage from crimes to seek compensation and redress in separate civil court proceedings.

Slovenia

36. There have been no changes in Slovenia since the 2010 report. However, at the end of 2010, the process of amending the Criminal Code was initiated; the proposed amendments affect the provisions related to universal jurisdiction. The process is in the phase of inter-ministerial harmonization; the final form of proposed changes and their effects are still under consideration. Once the process is completed, updated information on the amendments will be provided.

Spain

37. The Spanish Constitution of 1978 does not contain any provision relating to the exercise of universal jurisdiction. Any exercise of such a power is therefore based on domestic legislation, pursuant to the general jurisdiction granted by the Constitution, under article 117.3, to Spanish judges and courts to issue and enforce judgements "in accordance with the rules of jurisdiction and procedure established [by law]". This enabling provision was expanded by the Judicial Power Organization Act No. 6/1985 of 1 July, which includes universal jurisdiction, although without referring to it as such, as one of the bases of jurisdiction of Spanish judges and courts.

38. Article 23.4 of the 1985 Act attributes to the Spanish courts both universal jurisdiction *stricto sensu*, and a special extraterritorial competence based on the principle of (Spanish) nationality (active personality) of the perpetrators of the

crimes listed in it. Nevertheless, both Spanish doctrine and practice usually refer to article 23.4 of Act No. 6/1985 only as a basis for universal jurisdiction in Spain. Article 23.4 was amended in 2005 (Organization Act No. 3/2005 of 8 July amending Judicial Power Organization Act No. 6/1985 of 1 July on extraterritorial prosecution for female genital mutilation); in 2007 (Organization Act No. 13/2007 of 19 November, on extraterritorial prosecution for human trafficking or smuggling of persons); and in 2009 (Organization Act No. 1/2009 of 3 November, inter alia, amending the list of crimes subject to universal jurisdiction).

39. Thus, the list of crimes has been expanded over the years, whereas the crime of counterfeiting foreign currency was removed in the 2009 reform. Jurisdiction also applies to any other crime that should be prosecuted in Spain under international treaties and conventions, especially international humanitarian law and human rights treaties.

40. According to the new wording of article 23.4 of Act No. 6/1985, all of the most serious crimes of international scope have been placed under universal jurisdiction (see table 1), together with crimes which are clearly international in scope and to which Spain attaches particular importance. The clause also allows the principle of universal jurisdiction to be applied to crimes that Spain has the obligation to prosecute under international treaties, even where they are not specifically mentioned.

41. Competence to exercise universal jurisdiction is attributed exclusively, at first instance, to the Criminal Chamber of the National High Court, the judicial body which has jurisdiction under Spanish law to prosecute certain crimes owing to their gravity, to the fact that they were committed anywhere in national territory or to the international connection or dimension of the crimes committed. The judgements of the National High Court are subject to appeal before the Supreme Court.

42. Universal jurisdiction may be invoked through any of the procedural mechanisms provided for in Spanish legislation, although in practice the cases brought before the National High Court have been based on a complaint or dispute involving private individuals. The authors of the complaint or dispute have usually been either direct or indirect victims of the acts reported, such as organizations or legal persons that in some way represent the public interest or whose principal activity is the defence of human rights.

Sweden

43. Under its Criminal Code, Sweden exercises universal jurisdiction over crimes against international law, which are defined as "a serious violation of a treaty or agreement with a foreign power or an infraction of a generally recognized principle or tenet relating to international humanitarian law concerning armed conflicts". Thus, treaties and customary international law concerning international humanitarian law are applicable in the determination of whether a crime against international law has been committed. Sweden also exercises universal jurisdiction, inter alia, over the crime of genocide (see table 2).

44. In order to initiate proceedings in respect of international crimes that are not implemented into Swedish national law, the offence in question must fall within the scope of Sweden's criminal law. Since 1986, Sweden has been party to the Convention against Torture. An act of torture can constitute a crime under the Penal

Code, most likely as extremely gross assault. If the least severe punishment for a crime is imprisonment for four years or more, as in the case of extremely gross assault, Swedish courts have universal jurisdiction.

45. In 2002, the Swedish Commission on International Criminal Law, formed to review Swedish legislation in the light of a Government resolution on 12 October 2000 concerning the Rome Statute, presented a report, that proposes a new Act on International Crimes granting universal jurisdiction over new provisions on genocide, crimes against humanity and war crimes. The proposal is to some extent based on the provisions of the Rome Statute, which Sweden has ratified.

Switzerland

46. Switzerland recognizes and applies universal jurisdiction in its legal system and has done so for a number of years. Certain acts are therefore prosecuted despite the absence of the traditional jurisdictional links under the Penal Code. Under the Penal Code, this application relates to certain crimes (see table 1) or crimes or offences prosecuted under an international agreement and particularly serious crimes prohibited by the international community.

United Kingdom of Great Britain and Northern Ireland

47. The United Kingdom considers that under international law, universal jurisdiction in its true sense (as national jurisdiction established over a crime irrespective of the place of perpetration, the nationality of the suspect or the victim or other links between the crime and the prosecuting State) is only clearly established for a small number of specific crimes, namely piracy and war crimes, including grave breaches of the Geneva Conventions. Universal jurisdiction is permissive, unless a mandatory treaty-based obligation exists to provide for the prosecution of these crimes, for example as provided by the Geneva Conventions in respect of grave breaches. In other words, under international law, States are entitled, but not obliged, outside of treaty-based obligations, to assert universal jurisdiction over these crimes.

48. The United Kingdom acknowledges that there is a further limited group of crimes which some States consider to attract universal jurisdiction, including genocide and crimes against humanity, but there is a lack of international consensus on the issue. These crimes are not underpinned by treaties providing for universal jurisdiction. Accordingly, a careful study of State practice and *opinio juris* would be required to determine whether they are established under customary international law as crimes of universal jurisdiction and whether there are conditions for the exercise of such jurisdiction.

49. The United Kingdom has in some cases extended its extraterritorial jurisdiction to cover persons with a close connection with the United Kingdom other than United Kingdom nationals. For example, the International Criminal Court Act 2001 provides for jurisdiction over genocide, war crimes and crimes against humanity committed overseas by persons who are resident in the United Kingdom (see table 2).

2. Applicable international treaties

50. Table 3 contains a list of the treaties referred to, on the basis of information received, by Governments, including treaties containing *aut dedere aut judicare* provisions.

3. Judicial and other practice

Azerbaijan

51. With regard to the crimes covered by article 12.3 of the Criminal Code (see para. 6 above), 88 people were convicted for trafficking in persons, 5,098 for trafficking in narcotic drugs and psychotropic substances, 17 for terrorism and 37 for manufacturing or selling counterfeit money or securities.

Botswana

52. Although the Geneva Conventions have been given domestic effect, their application has never been tested in the courts. As such, there is no judicial practice nor is there any judicial precedent for their application.

Colombia

53. There is no legal precedent of a specific act or case where a person was tried and/or convicted in exercise of universal jurisdiction. However, the Constitutional Court, in Judgement No. C-554 of 2001, case D-3231, noted that:

> [...] article 17 of the new Penal Code allows for this possibility in accordance with article 9 of the Constitution, which establishes that Colombia's foreign relations are based on, inter alia, the principles of international law accepted by Colombia, in particular what is referred to as the principle of universal jurisdiction.
>
> 4.8. This principle, which is of a customary nature, is expressly set out in various international conventions to which Colombia is a party, such as the conventions against torture, genocide, apartheid and illicit traffic in narcotic drugs. It is also set out in numerous judicial cooperation agreements entered into by Colombia, which have been endorsed by this Court, on the understanding that cooperation in investigations does not, in and of itself, violate *non bis in idem*. In this regard, it should be noted that this Court has already indicated that the principle of universal jurisdiction is a mechanism for international cooperation in combating certain activities which are repudiated by the international community and that it coexists with, but does not supersede, the ordinary jurisdictional competencies of States, as expressly stated in the treaties in which it is established. [...].[2]

[2] The Constitutional Court further noted that [...] based on the principle of modified monism, international norms have limited primacy in domestic law, in that they cannot negate the validity of national provisions simply because they conflict with those provisions; what happens is that, in each specific case, national law will have to yield to the higher-ranking law. See Judgement No. C-1189 of 2000. [...].

El Salvador

54. The principle of universality under the Criminal Code is formulated very broadly, and will no doubt be the object of judicial interpretation in due course. However, given the absence of the requisite conditions, the power accorded to criminal courts under the principle of universal jurisdiction to hear specific cases has never been exercised.

Lithuania

55. The Ministry of Justice did not have any data on criminal cases tried in the Supreme Court of Lithuania and important adopted rulings (or respective explanations) in criminal cases on issues of universal criminal jurisdiction.

Paraguay

56. The courts authorized the extradition of several Paraguayan citizens, at the request of Argentine courts, for the alleged commission of crimes against humanity under the Argentine military dictatorship during the period from 1976 to 1983, including an extradition request from an Argentine court with a view to the trial and potential conviction of Samuel Miara.

Philippines

57. In *Bayan Muna* v. *Romulo*, although the main issue involved was the Non-Surrender Agreement concluded by and between the Republic of the Philippines and the United States of America, the Supreme Court had the opportunity to state that genocide, war crimes and crimes against humanity had attained the status of customary international law.

Slovak Republic

58. The Ministry of Justice did not have information concerning a direct application of universal jurisdiction by the courts or any extradition request based on universal jurisdiction.

Sweden

59. At the time of reporting, there had not been any case in the courts concerning international crimes based on universal jurisdiction, namely where the alleged crime had been committed outside Swedish territory and neither the alleged perpetrator nor the victim were Swedish.

Switzerland

60. Information on the *F. N.* case was provided (see A/65/181, para. 65).

United Kingdom of Great Britain and Northern Ireland

61. Faryadi Zardad, an Afghan national, was convicted in 2005 of conspiracy to torture and conspiracy to take hostages in Afghanistan. He was sentenced to 20 years' imprisonment.

62. On 15 April 1996, a United Kingdom resident, Szymon Serafinowicz, was charged under the War Crimes Act 1991 with the murder of three persons between

1941 and 1942 at a concentration camp in Byelorussia (now Belarus), where he was serving as a guard. On 17 January 1997, he was found by a jury at the Central Criminal Court to be unfit to stand trial. On 1 April 1999, Anthony (Andrzej) Sawoniuk was sentenced under the War Crimes Act 1991 to life imprisonment for the murder of two civilians in Domachevo, Byelorussia, in 1942.

B. Conditions, restrictions or limitations to the exercise of jurisdiction

1. Constitutional and domestic legal framework

Azerbaijan

63. Under article 13.3 of the Criminal Code, if a person who has committed a crime outside Azerbaijan is not handed over to a foreign State and if the offence is deemed a crime under the Code, that person is subject to criminal prosecution in Azerbaijan.

64. Under article 502 of the Code of Criminal Procedure, the authority to bring a criminal prosecution against a national of Azerbaijan suspected of committing an offence in a foreign State resides with the prosecuting authority of Azerbaijan, on the basis of an official request from the competent authority of that foreign State and in accordance with the legislation of Azerbaijan. In accordance with paragraph 3 of the note on article 3 of the Act concerning the extradition of persons who have committed crimes, following a motion of the requesting State, the person whose extradition from Azerbaijan has been refused because he or she is a national of Azerbaijan or because the offence for which extradition is requested is a capital offence, may be criminally prosecuted under the law of Azerbaijan.

Bosnia and Herzegovina

65. Article 9 (5) of the Criminal Code provides that criminal legislation shall be applied only if an alien is found in the territory of Bosnia and Herzegovina and is not extradited to a foreign State. Therefore, pursuant to the universal principle, the laws of the State shall be applied when no other State requests the extradition of the alien or when such extradition is refused. In addition, in accordance with the same article 9, the application of domestic legislation to a foreign national requires dual criminality, and the offence should carry a punishment of imprisonment of five years or more under the laws of the respective States.

Botswana

66. Any magistrate within Botswana shall have jurisdiction to hear cases invoking the Geneva Conventions Act only if the Director of Public Prosecutions has instituted the proceedings. Where there is doubt as to the circumstances in which the Act applies, a certificate signed by or on behalf of the President shall be accepted as evidence in proving the said circumstances.

Lithuania

67. The Constitution and other legal acts pertaining to criminal procedures provide for immunity from criminal jurisdiction in respect of certain persons (the President of the Republic, members of the Government, Presidential candidates, members of the Seimas (Parliament of Lithuania) and municipality councils, judges of the

Constitutional Court and other courts, personnel of diplomatic missions and consular establishments and so forth).

68. Under the Criminal Code, the question of the criminal liability of persons who enjoy immunity from criminal jurisdiction under international legal norms and commit a criminal act in Lithuania is determined in accordance with treaties to which Lithuania is a party and the Criminal Code.

69. The Code of Criminal Procedure, which applies unless an international treaty to which Lithuania is a party specifies otherwise, provides that in such cases or if permission to prosecute is not obtained when such permission is obligatory under the law, the criminal procedure may not be instituted, and, if instituted, must be terminated, and such persons cannot be detained or arrested. The procedures specified can be carried out with respect to such persons only upon their request or consent obtained through the Ministry of Foreign Affairs.

70. The Code of Criminal Procedure envisages a pretrial investigation, upon receipt of a complaint, statement or notification regarding criminal acts or after a prosecutor or pretrial investigation officer establishes features of criminal acts, under the direction of the Prosecutor General. In respect of crimes for which criminal responsibility is derived from international treaties (art. 7 of the Criminal Code), the Prosecutor General of Lithuania has adopted recommendations which require temporary detention and urgent investigative action in cases where, when performing alien verification, there is suspicion that an alien may have committed a crime against humanity, war crimes, genocide or any other crime set forth in article 7 (2)-(10) of the Criminal Code.

Paraguay

71. Paraguayan criminal law shall apply only where the perpetrator has entered the national territory. However, prosecution is prohibited where a foreign court has acquitted the person in question or has sentenced the person to a term of imprisonment and the sentence has been served or suspended, or the person has been pardoned. Concerning other offences committed abroad, under article 9 of the Criminal Code, Paraguayan criminal law shall apply only when the dual criminality requirement is met and if at the time of commission, the perpetrator (a) held Paraguayan nationality or acquired it after the offence was committed; or (b) was not a Paraguayan national but was present in Paraguay and extradition had been refused even though the nature of the offence would have made it legally permissible; this provision shall also apply where there is no provision for punishment in the place of commission.

Philippines

72. Under section 17 of chapter VIII of the Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, the State shall exercise jurisdiction over a person, whether military or civilian, suspected or accused of a crime under the Act, regardless of where the crime is committed, provided that the accused (a) is a national; (b) regardless of citizenship or residence, is present in the Philippines; or (c) has committed the crime against a Filipino.

73. The relevant authorities may, in the interest of justice, dispense with the investigation or prosecution of a crime punishable under the Act. If another court or

international tribunal is already conducting the investigation or undertaking the prosecution of such crime, the authorities may surrender or extradite a suspected or accused person present in the Philippines to another State pursuant to the applicable extradition laws and treaties or to the appropriate international court, if any.

Spain

74. The scope of universal jurisdiction in Spain was the subject of reform in 2003 (the Organization Act No. 18/2003 on cooperation with the International Criminal Court), 2005 (Organization Act No. 3/2005) and 2009 (Organization Act No. 1/2009). The first two reforms contained partial amendments, while the 2009 reform redefined the overall scope of universal jurisdiction, taking into account and incorporating the earlier amendments. The 2003 Act contains a requirement of subsidiary universal jurisdiction in cases where the crime prosecuted might fall within the jurisdiction of the International Criminal Court. Under the terms of article 7, this form of subsidiary jurisdiction applies to the exercise of universal jurisdiction *stricto sensu*. Universal jurisdiction may be exercised in Spain for those crimes, with the sole restriction that the International Criminal Court has the first option to exercise its international jurisdiction. This restriction on universal jurisdiction in cases where an international court has previously exercised jurisdiction or has priority of jurisdiction, which was subsequently taken into account by the Constitutional Court in its Judgement No. 227/2007, became a general rule in the 2009 reform.

75. The 2005 reform introduced a restriction on the scope of jurisdiction with regard to female genital mutilation, in which case the exercise of universal jurisdiction by Spanish courts is tenable where "the perpetrators are present in Spain". This restriction, which modifies the general model in force under Act No. 6/1985, was maintained to some extent in the 2009 reform.

76. The reform in 2009 took place "[in] compliance with the mandate established by the Congress of Deputies [lower chamber of the Spanish parliament], through the resolution adopted on 19 May 2009 in connection with the State of the Nation debate". It "adapts and clarifies [art. 23.4 of Act No. 6/1985] in accordance with the principle of subsidiarity and the doctrine established by the Constitutional Court and the jurisprudence of the Supreme Court" of Spain. In accordance with article 1 of Act No. 1/2009, article 23.4 of Act No. 6/1985 was amended substantially by the inclusion of two new paragraphs:

> Without prejudice to the provisions of international treaties and agreements signed by Spain, in order for Spanish courts to have jurisdiction over the [...] offences [listed in art. 23.4 of Act No. 6/1985], it must be established that the alleged perpetrators are present in Spain, that there are victims of Spanish nationality or that there is some relevant link with Spain and, in any event, that no other competent country or international court has initiated proceedings, including an effective investigation and, where appropriate, prosecution, of such crimes.
>
> The criminal proceedings initiated in a Spanish court shall be temporarily stayed where it has been established that proceedings based on the alleged acts have been initiated in the country or by a Court referred to in the previous paragraph.

77. Thus, universal jurisdiction in Spain is now restricted and depends on: (a) the existence of a link with Spain, on the basis of the Spanish nationality of the victim (passive personality); the presence in Spain of the alleged perpetrator; or any other relevant link with Spain. The existence of these elements must be verified, in each case, by the competent court; (b) the subsidiary nature of Spanish universal jurisdiction in relation to the courts of third States or of an international court, without restricting that subsidiarity to the mere application of *res judicata*. These restrictions and conditions should be applied "without prejudice to the obligations of Spain under international treaties", which excludes the application of such restrictions where Spain has an obligation under an international treaty to prosecute certain crimes, regardless of the place where they were committed or the nationality of the alleged perpetrator.

78. This modification of the scope of universal jurisdiction was already taken into account in the *Tibet* case (China) where proceedings were halted owing to the lack of any link with Spain (order of 4 November 2010), thus confirming the order previously issued by the examining magistrate.

Sweden

79. It is of utmost importance that the rule of law govern national judicial systems, to ensure an impartial and fair trial for all parties involved in an investigation or prosecution regarding international crimes. Under the Criminal Code of Sweden, the prosecution of crimes against international law committed outside Sweden requires the authorization of the Government.

Switzerland

80. Switzerland subscribes to the "conditional" or "limited" interpretation of universal jurisdiction. The exercise of universal jurisdiction is subject to (a) the presence of the suspect in Swiss territory; (b) and his or her non-extradition to another competent jurisdiction. Moreover, its exercise is reserved for serious crimes. Other crimes and offences are prosecuted on the basis of the "traditional" principles of jurisdiction (territoriality or nationality, for example).

81. Following amendments to the Swiss Penal Code and the Military Penal Code to implement the Rome Statute, the requirement of a "close tie" to Switzerland for prosecuting war crimes was dropped. The compatibility of this requirement with international law (Geneva Conventions of 1949) was also called into question. The legislative amendments entered into force on 1 January 2011. The crimes in question fall under federal jurisdiction (article 23g of the Code of Penal Procedure) and are prosecuted automatically. This means that the competent authorities may open an investigation as soon as they are notified of the crime.

United Kingdom of Great Britain and Northern Ireland

82. The United Kingdom legal system is built on the tradition that, as a general rule, the authorities of the State in whose territory an offence is committed are best placed to prosecute the crime, in particular because of the availability of evidence and witnesses and the visibility of justice for victims. However, the exercise of territorial jurisdiction is not always possible. In such cases, while it will not be the option of first resort (as illustrated by the very limited examples of its exercise in practice, both within the United Kingdom and elsewhere), universal jurisdiction can

be a necessary and important tool to ensure that the perpetrators of serious crimes do not escape justice.

83. Where universal jurisdiction is exercised, or indeed in other cases where there may be competing jurisdictional claims, the United Kingdom considers that it is advisable that safeguards be put in place to ensure that jurisdiction is exercised responsibly. For example, United Kingdom prosecuting authorities would not usually seek to proceed against any suspect who was not present in the United Kingdom. In addition, United Kingdom legislation requires the consent of the Attorney General for England and Wales, or his or her equivalent elsewhere in the United Kingdom, for a prosecution under universal jurisdiction to proceed. This ensures that public interest considerations, including issues of international comity, can be taken into account in decisions to proceed with such prosecutions.

2. Judicial and other practice

El Salvador

84. The Constitutional Division of the Supreme Court of Justice in the Habeas Corpus Sentence 198-2005 of 4 September 2006 noted that:

> *ne bis in idem* is a constitutional guarantee, the purpose of which is to prevent double or multiple prosecutions and to offer the legal certainty to the person who has been tried once a definitive sentence has been issued, that he or she will not be tried again on the same grounds. The term "same cause", which is preferable to the concept of the "same offence", defines the protective purpose of the guarantee, which is to safeguard the person who has been tried from the risk of being subjected to a new ruling based on the same cause — which encompasses the identity of the subject, the object and the factual context, as well as the legal background of the case — that would definitively affect his or her legal status.

Spain

85. Since the mid-1990s, the National High Court has had to deal with a significant number of cases based on the principle of universal jurisdiction and involving acts that had taken place in various regions and different categories of serious crimes, in particular genocide, torture and other crimes against humanity, and war crimes.

86. The following cases preceded the 2009 amendment of Act No. 6/1985: *Pinochet* case (1996); *Scilingo and Cavallo* case (Argentina, 1998); *Guatemala* case (1999); *Couso* case (2003); *Falun Gong* case (China, 2003); *Rwanda* case (2004); *Tibet* case (China, 2006 and 2008); *Sahara* case (2006); *Atenco* case (gender-based murders in Mexico, 2008); *Nazi concentration camps* case (2008); *Gaza* case (2008); *Guantánamo* case (2009).

87. Taking a literal interpretation of article 23.4 of Act No. 6/1985, the National High Court concluded in the first cases submitted to it under the Act that the principle of universal jurisdiction was not subject to any condition in Spain and that the only relevant fact for establishing the exercise of its competence was the alleged commission of one or more of the crimes listed in article 23.4 of Act No. 6/1985.

88. As a result, the National High Court maintained a concept of absolute universal jurisdiction that was restricted only (under article 23.5 of Act No. 6/1985) by *res judicata*, according to which Spanish judges and courts may not exercise jurisdiction if "the perpetrator [has] been acquitted, pardoned or convicted abroad".

89. The concept of universal jurisdiction as interpreted by the Courts allowed criminal proceedings to be brought even where the accused was not present in Spanish territory; this required the subsequent initiation of extradition proceedings. This was the interpretation followed in the *Pinochet* case (1996). The National High Court used the same interpretation in the *Argentina* case (the *Scilingo* case and the *Cavallo* case).

90. However, in 2000, the National High Court altered its interpretation of article 23.4 of Act No. 6/1985, by introducing conditions for the exercise of universal jurisdiction. In the *Guatemala* case, the Criminal Chamber of the National High Court declined to exercise universal jurisdiction because it considered that the Guatemalan courts were able to prosecute on the basis of the events that were the subject of the complaint and that it should therefore not exercise a universal jurisdiction that it described as "subsidiary". The Supreme Court subsequently confirmed this restrictive interpretation of the scope of universal jurisdiction in its Judgement No. 327/2003, of 25 February, which was issued as a result of the appeal, filed by the authors of the complaint, against the order by the National High Court in the case. In this judgement, the Supreme Court rejected the idea of subsidiary universal jurisdiction, but concluded that it could not be exercised in Spain unless one of the following conditions was fulfilled: that the accused was present in Spain, that the victim was Spanish, or that there was a specific Spanish interest in the matter.

91. The persons who brought the original complaint before the National High Court and then appealed to the Supreme Court, filed for the remedy of *amparo* against Supreme Court Judgement No. 327/2003 in special human rights proceedings before the Constitutional Court. As a result of that appeal, the Constitutional Court concluded, in its Judgement No. 237/2005 of 26 September 2005, that Act No. 6/1985 had established a model of universal jurisdiction that was strict and unconditional and that, consequently, the competent judicial bodies could not introduce restrictions or conditions on the exercise of universal jurisdiction other than the restriction imposed by *res judicata*. In the opinion of the Constitutional Court, to impose any other condition or restriction would violate the right to effective legal protection set out in article 24.1 of the Spanish Constitution as the judicial body would be denying access to the courts without a specific legal basis.

92. Accordingly, the Constitutional Court granted *amparo* to the appellants, declared that the National High Court order and Supreme Court judgement against which the appeal had been brought were invalid and ordered the legal proceedings to be resumed at the point at which the violation of article 24.1 of the Spanish Constitution, read jointly with article 23.4 of Act No. 6/1985, had occurred. As a result, the National High Court reopened the *Guatemala* case; the proceedings before that court were still under way at the time Spain submitted the present information.

93. The Constitutional Court reiterated this doctrine in its Judgement No. 227/2007 of 22 October, which was issued in *amparo* proceedings against a

National High Court order and a Supreme Court judgement that had rejected a complaint concerning allegations of torture and crimes against humanity committed by Chinese leaders against members of the Falun Gong movement.

94. In any event, these Constitutional Court judgements do not refer to the "constitutionality" of universal jurisdiction, but rather to the obligation of judges and courts to exercise such jurisdiction in accordance with the law, thus respecting the constitutional right to effective judicial protection. As a result, the Constitutional Court did not close the door to a possible amendment of Act No. 6/1985 that would introduce restrictions on and conditions for the exercise of universal jurisdiction.

95. Following the 2009 reform, a complaint was lodged against various Israeli authorities by two Spanish nationals who had been present on one of the boats in the freedom flotilla intercepted on the high seas by an Israeli warship in May 2010. In a number of those cases, the victims of the crimes reported were Spanish citizens. Thus, the principle of universal jurisdiction coincided with competence based on passive personality, which is not, however, specially and separately regulated in Act No. 6/1985.

96. In every case, some of the alleged perpetrators of the crimes occupied or had occupied high-level posts in their respective States and some of them had been agents in the service of the United Nations (the *Rwanda* case). Nonetheless, in only one of the cases that the National High Court has heard on the merits has it declared itself not competent to exercise jurisdiction over one of the persons against whom a complaint had been made on the grounds of the post occupied by that person at the time when the judicial proceedings were initiated. That case concerned the complaint made in the *Rwanda* case against the President of that country, Paul Kagame, whom the National High Court declared to be protected by the immunity of incumbent Heads of State under international law.

97. Similar decisions had been taken previously by Spanish courts in other cases in which complaints had been brought against incumbent Heads of State or Government. For example, the National High Court had declared that it did not have competence to prosecute Fidel Castro, Teodoro Obiang Nguema, Hassan II, Slobodan Milošević, Alan García, Alberto Fujimori and Silvio Berlusconi. In some of these cases, the National High Court's declaration of lack of competence in respect of a Head of State included a general statement that it was not competent to prosecute other persons allegedly involved in the case. In the *Rwanda* case, however, the Court restricted its statement of lack of competence to President Kagame, declaring itself competent to prosecute the other accused persons.

98. Although each of the aforementioned cases has faced various problems and has reached a different stage of the proceedings, attention is drawn to the great difficulties experienced by the National High Court in exercising its jurisdiction. This has largely been due to the fact that the accused persons were not present in Spanish territory and that extradition proceedings were required, as well as the equally important need to obtain judicial cooperation and assistance from the third States in whose territory most of the judicial, investigative and other activities essential for the proper conduct of the criminal proceedings had to take place.

99. It is only in the *Scilingo* case that the National High Court, in the exercise of universal jurisdiction, handed down a sentence: 1,084 years for torture and other crimes against humanity. The convicted person appealed unsuccessfully to the

Supreme Court and the Constitutional Court. On 1 December 2008, Mr. Scilingo, who is currently serving his sentence in Spain, filed a complaint with the European Court of Human Rights for alleged violation of the right to a fair trial.

100. It should also be mentioned that in the *Cavallo* case, the accused, who was being prosecuted in Spain, was extradited to Argentina at the request of the courts of that country in order to be prosecuted for torture and other crimes committed in its territory.

III. Scope and application of universal jurisdiction: comments by observers

African Union

101. Certain States members of the African Union provide for the exercise of universal jurisdiction over piracy, genocide, crimes against humanity and war crimes. One State establishes universal jurisdiction over crimes against humanity and genocide only, while others grant universal jurisdiction over grave breaches under the 1949 Geneva Conventions. Most of its members are party to the 1984 Convention against Torture; however, a number need to implement the Convention at the domestic level.[3]

102. In at least two member States, immunities that might otherwise bar the prosecution of foreign State officials have been abrogated in respect of genocide, crimes against humanity and war crimes. In addition, in accordance with article 12 of the 2006 Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and All Forms of Discrimination to the Pact on Security, Stability and Development in the Great Lakes Region, the provisions of the chapter on genocide, war crimes and crimes against humanity apply irrespective of the official status of the suspect.

103. There are legal limitations to the exercise of universal jurisdiction in the legislative practice of African Union members, for example, the requirement that the suspect be in the territory of the prosecuting State at the time of the initiation of criminal proceedings and respect for the immunities from criminal jurisdiction enjoyed by State officials under international law.

104. The practical problems likely to be faced by its members in exercising universal jurisdiction are probably the same as those encountered by other States, although given the relative capacity of its members, the impediment is apt to be greater. No African State is known to have exercised universal jurisdiction effectively. In one State, an indictment was brought against a former African head of State, but proceedings were not pursued. In a decision of July 2006, the African Union Assembly mandated the African State in question to prosecute and ensure that the suspect be tried, on behalf of Africa, by a competent court of that State, with guarantees for fair trial.

[3] The survey was not a comprehensive account of the national laws and practices of African Union member States in relation to universal jurisdiction; it aimed to highlight commonly observed and notable features of those laws and practices, based on publicly available documentation.

105. In its 2009 decision 213 (XII), the Assembly requested the African Union Commission, in consultation with the African Commission on Human and Peoples' Rights, and the African Court on Human and Peoples' Rights, to examine the implications of the Court being empowered to try international crimes such as genocide, crimes against humanity and war crimes. This process is ongoing.

106. Article 4 (h) of the 2000 Constitutive Act of the African Union establishes the right of the Union to intervene in a member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity; it effectively prohibits the commission of these crimes in Africa. This provision provides the basis of the practice of the African Union in respect of universal jurisdiction over war crimes, genocide and crimes against humanity.

107. Article 8 of the 1977 African Union Convention for the Elimination of Mercenarism in Africa, article 13 of the 2003 African Union Convention on Preventing and Combating Corruption, article 10 of the 2006 Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and All Forms of Discrimination do not establish universal jurisdiction.

108. The African Union and its member States welcome the principle of universal jurisdiction and are committed to addressing impunity, as shown by article 4 (h) of its Constitutive Act and emphasized in subsequent African Union decisions. Article 4 (h) amounts to a statement that impunity for war crimes, genocide and crimes against humanity is unacceptable to African Union member States. Indeed, many African States have expressed approval of the principle of universal jurisdiction on a treaty basis, and existing practice shows that many establish a jurisdictional link with the commission and punishment of such crimes as genocide, crimes against humanity and war crimes.

109. Africa's grave concern regarding the applicability of the principle of universal jurisdiction does not pertain to what is being done collectively through multilateral processes or the world community[4] but rather to the indictments by individual judges in non-African States, which focus primarily on African leaders who are entitled to immunity under international law. African Union member States consider that they have been singularly targeted in the indictment and arrest of their officials and that the exercise of universal jurisdiction by European States, notably France and Spain, is politically selective against them. This raises a concern about double standards, which is heightened by multiple charges being brought against officials of African States in the jurisdictions of different European States. The African perception is that the majority of indictees are sitting officials of African States, and the indictments against such officials have profound implications for relations between African and European States, including the legal responsibility of the relevant European States. As one leader of a European State intimated, the powers of investigative judges relating to indictments against officials of foreign States need to be reviewed and the relevant legislation amended.

[4] See the various decisions of the Assembly of Heads of State and Government on the abuse of the application of the principle of universal jurisdiction adopted in July 2008, January and July 2009, January and July 2010 and January 2011 (Assembly/AU/Dec.199(XI), Assembly/AU/Dec.213(XII), Assembly/AU/Dec.243(XIII), Assembly/AU/Dec.271(XIV) and Assembly/AU/Dec.292(XV)).

Council of Europe

110. None of the treaties drawn up within the Council of Europe contain a provision explicitly recognizing the principle of universal jurisdiction. Nonetheless, these treaties, in particular the treaties on cooperation in criminal matters, allow States parties to exercise universal jurisdiction in cases where their national legislation provides for it.[5]

111. The principle of universal jurisdiction is referred to in the explanatory reports on certain conventions, for example, the portion of the Explanatory Report on the Convention on the Protection of Environment through Criminal Law (CETS No. 172) relating to article 5 (3). Similarly, a clarification is provided in paragraph 83 of the Explanatory Report on the Criminal Law Convention on Corruption, relating to article 17 (4).[6]

112. In its decision of 17 March 2009, *Ely Ould Dah v. France*, the European Court of Human Rights allowed the exercise of universal jurisdiction and concluded that it was not a violation of the European Convention on Human Rights.[7] The Court recalled that in the light of its previous case law,[8] it fell within the power of the High Contracting Parties to determine their own criminal policy, which was not, in principle, a matter for it to comment on and that a State's choice of a particular criminal-justice system was in principle outside the scope of the supervision it carried out at European level, provided that the system chosen did not contravene the principles set forth in the Convention. The Court thus recognized the conformity of universal jurisdiction, and any other non-territorial and non-personal jurisdiction, with the European Convention on Human Rights.

113. Moreover, the Court held, with regard to the application of French universal jurisdiction, that an amnesty law was generally incompatible with the duty on States to investigate such acts [of torture or barbarity][9] and that the obligation to prosecute such acts could not be called into question by granting impunity to the perpetrator under an amnesty law that could be considered improper in the eyes of international law.[10]

[5] See art. 6 (2) of the 1977 European Convention on the Suppression of Terrorism (CETS No. 090); art. 5 (3) of the 1998 Convention on the Protection of Environment through Criminal Law (CETS No. 172); art. 17 (4) of the 1999 Criminal Law Convention on Corruption (CETS No. 173); art. 14 (4) of the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS No. 196); art. 31 (5) of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

[6] Full texts of Council of Europe treaties as well as their explanatory reports, in French and English, are available from the website of the Council of Europe Treaty Office: http://conventions.coe.int.

[7] European Court of Human Rights, Fifth Section, 17 March 2009, *Ely Ould Dah v. France* (admissibility), Application No. 13113/03.

[8] European Court of Human Rights, Grand Chamber, 29 March 2006, *Achour v. France*, Application No. 67335/01, vol. ECHR 2006-IV, paras. 44 and 51, respectively.

[9] Here, the Court is referring to the fact that the prohibition of torture has "attained the status of a peremptory norm or *jus cogens*".

[10] The judgments and decisions of the European Court of Human Rights can be consulted on the HUDOC database, which can be accessed through the Court's website, http://www.echr.coe.int.

International Labour Organization

114. Article 25 of the Forced Labour Convention (1930), No. 29 (ratified by 174 member States of ILO) requires State action to enact and enforce criminal penalties against forced or compulsory labour. The Convention defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily", and provides certain limited exclusions.

115. The independent Commission of Inquiry appointed under article 26 of the Constitution of ILO to examine the observance by Myanmar of the Convention stated its legal opinion on the status of forced labour in international law, as follows (footnotes omitted):

> 203. ... there exists now in international law a peremptory norm prohibiting any recourse to forced labour and that the right not to be compelled to perform forced or compulsory labour is one of the basic human rights. A State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act for which it bears international responsibility; furthermore, this wrongful act results from a breach of an international obligation that is so essential for the protection of the fundamental interests of the international community .... Similarly, the International Court of Justice has qualified the obligation to protect the human person against slavery as an obligation *erga omnes* since, in view of the importance of this right, all States can be held to have a legal interest in its protection.
>
> 204. Finally, any person who violates this peremptory norm is guilty of a crime under international law and thus bears individual criminal responsibility. More specifically, enslavement ... is also, if committed in a widespread or systematic manner, a crime against humanity that is punishable ....[11]

International Maritime Organization

116. As mentioned or implied by a number of States in their submissions to the Secretary-General (see A/65/181), the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988) and its Protocol of 2005 contain an element or building block of universal jurisdiction to the extent that they allow for the prosecution by any State party of an alleged offender on the basis of his or her presence in the territory of that State party regardless of the lack of any other connection to the offence (see, for example, article 6 of the 1988 Convention). As at 25 January 2011, there were 157 States parties to the Convention. There are currently 17 States parties to the Protocol of 2005, which entered into force on 28 July 2010.

Organization for the Prohibition of Chemical Weapons

117. The prohibition of the use of chemical weapons provided for under article I of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction exists as a principle of

[11] The relevant section of the report of the Commission of Inquiry is available from: http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar3.htm.

customary international law and thus is applicable to all States, even to those that have not become a party to the Convention.

118. The Chemical Weapons Convention does not explicitly require States parties to prosecute the activities prohibited under the Convention on the basis of universal jurisdiction. It only requires States parties to enact legislation to enable them to prosecute such prohibited activities when these are committed anywhere by their nationals or within their territorial jurisdiction.

119. States parties are not prevented from going beyond the requirements of the Convention and providing in their legislation for universal jurisdiction as a basis for prosecuting activities prohibited under the Convention. However, only a limited number have made the commission of such activities (for example, the use of chemical weapons) crimes of universal jurisdiction in their legislation implementing the Convention.

120. While the use of chemical weapons has not been prosecuted by national courts on the basis of universal jurisdiction, its characterization as the material element of war crimes, crimes against humanity or genocide, could provide a basis for the exercise of universal jurisdiction in the States that recognize this principle as a basis for prosecution of international crimes.

International Committee of the Red Cross

121. The basis for universal jurisdiction over serious violations of international humanitarian law is found in both treaty law and customary international humanitarian law.

122. The treaty basis of universal jurisdiction was introduced in the four Geneva Conventions for the protection of war victims in relation to those violations of the Conventions defined as grave breaches. Grave breaches are particularly serious violations of international humanitarian law listed in the four Geneva Conventions (arts. 50, 51, 130 and 147 respectively) and Additional Protocol I (arts. 11 and 85) thereto. There is a specific obligation under the relevant article of each Convention (art. 49 of the First Convention, art. 50 of the Second Convention, art. 129 of the Third Convention and art. 146 of the Fourth Convention).

123. The Geneva Conventions are among the earliest examples of universal jurisdiction in treaty law. While they do not expressly state that jurisdiction is to be asserted regardless of the place of the offence, they have been generally interpreted as providing for universal jurisdiction. The obligation to search for persons accused of having committed grave breaches imposes an active duty. Once it is known that a person who has committed a breach is within the territory of a High Contracting Party, its duty is to ensure that the person concerned is arrested and prosecuted without delay; the necessary police action should be taken spontaneously, not merely pursuant to a request from another State.[12]

124. The Geneva Conventions provide for mandatory universal jurisdiction since they oblige States parties to try persons who have allegedly committed grave breaches or to institute the necessary procedures to extradite such persons. States may institute legal enquiries or proceedings even against persons outside their

[12] See J. Pictet, ed., *Commentary to the Geneva Convention relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), p. 593.

territory. Given that extradition to another State may not be an option, States must in any event have in place criminal legislation enabling them to try alleged offenders, regardless of their nationality or the place of the offence.

125. Article 85 of Additional Protocol I (1977) to the Geneva Conventions extends the principle of universal jurisdiction to grave breaches of, inter alia, the rules relating to the conduct of hostilities. It also qualifies all grave breaches as war crimes.

126. While the relevant treaty law provisions are restricted to grave breaches, State practice has confirmed as a norm of customary international law the rule that States have the right to vest universal jurisdiction in their national courts over violations of the laws and customs of war that constitute war crimes (Rule 157, Customary International Humanitarian Law, 2005). This includes serious violations of common article 3 of the Geneva Conventions and Additional Protocol II committed in non-international armed conflict and other war crimes such as those recognized in article 8 of the Statute of the International Criminal Court.

127. A number of other instruments provide a similar obligation for States to vest universal jurisdiction in their national courts over certain crimes, including when they are committed during armed conflict. These include the Second Protocol (1999) to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (art. 16) and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (art. 9).

128. The Geneva Conventions have been universally ratified. Ratification imposes the obligation of States parties to establish universal jurisdiction in their legal order over grave breaches defined in these instruments and to exercise such jurisdiction when a specific case arises. This applies to all States. In the case of the 170 States parties to Additional Protocol I, the same obligation extends to the grave breaches defined in that Protocol. The Second Protocol to the 1954 Hague Convention and the International Convention for the Protection of All Persons from Enforced Disappearance provide for another, more limited approach to universal jurisdiction whereby States parties are obliged to take action when the alleged offender is present in their territory and they do not extradite him or her.

129. Numerous States have given effect to their obligations in national legislation and a number of suspects have been prosecuted in the national courts of various States for grave breaches of the Geneva Conventions and Additional Protocol I thereto on the basis of universal jurisdiction. The right of States to vest universal jurisdiction in their national courts over war crimes (beyond grave breaches) is also supported extensively by national legislation.

130. Practice has shown that the exercise of universal jurisdiction may take the form of either the enactment of national law (legislative universal jurisdiction) or the investigation and trial of alleged offenders (adjudicative universal jurisdiction). The former is more commonly found as part of State practice and is generally a necessary basis for investigation and trial. However, it is feasible, at least in principle, for a court to base its jurisdiction directly on international law and to exercise adjudicative jurisdiction without any reference to national legislation.

131. States have adopted a range of methods to provide for universal jurisdiction under their national legal order. In this regard, constitutional provisions are of central importance in determining the status of international customary or treaty law

in the domestic legal system. Courts might rely directly on such provisions or on international law to exercise universal jurisdiction where permitted or required. However, since the relevant provisions of international law are not self-executing, it is preferable that the bases of jurisdiction applicable to war crimes be provided for expressly in domestic law.

132. A number of States with a code-based civil law system provide for universal jurisdiction in their ordinary and/or military penal code. This code may define the jurisdictional and material scope of the offence in the same section. However, more frequently, the provisions on universal jurisdiction are included in the general section of the code and refer to substantive offences defined elsewhere in the same instrument. Universal jurisdiction may also be laid down in criminal procedural law or in a law on the organization of the courts. Some States have granted their courts universal jurisdiction with regard to certain offences by means of a special stand-alone law.

133. In countries without code-based systems, generally those belonging to the common-law tradition, the usual practice is to provide for universal jurisdiction in primary legislation defining both the jurisdictional and material scope of the offence.

134. At least 97 States have vested their national courts with universal jurisdiction to a certain degree over serious violations of international humanitarian law. This legislation provides for universal jurisdiction over any or a combination of the following: (a) grave breaches of the Geneva Conventions and Additional Protocol I thereto (primarily States members of the Commonwealth); (b) crimes specified under the Second Protocol to the 1954 Hague Convention and the International Convention for the Protection of All Persons from Enforced Disappearance (for example, Cyprus, Japan and the Netherlands); (c) other violations of international humanitarian law where no treaty requires universal jurisdiction, such as war crimes committed in non-international armed conflict (Belgium, Canada, New Zealand and the Philippines) and violations of treaties that either prohibit or regulate the use of certain weapons (South Africa); (d) the war crimes list contained in article 8 of the Rome Statute (Belgium, Canada, Germany, New Zealand and the United Kingdom).

135. In recent years, an increasing number of suspected perpetrators of war crimes committed in international armed conflict have been prosecuted in national courts on the basis of universal jurisdiction. ICRC was able to collect information on such prosecutions in at least 16 countries, including Australia, Canada, Denmark, Germany, Israel, the Philippines, the United Kingdom and the United States. Several suspects have also been tried by national courts for war crimes committed in non-international armed conflicts on the basis of universal jurisdiction, including in Belgium, France, the Netherlands and Switzerland. It is significant that the States of nationality of the accused generally did not object to the exercise of universal jurisdiction in these cases.

136. When establishing universal jurisdiction for war crimes in their legal order, some States chose to attach conditions to the exercise of this type of jurisdiction, such as the existence of a particular link to the forum State. Usually, this is understood to require that the suspect or alleged perpetrator be present in the territory before proceedings are instituted. According to information collected by ICRC, presence in the territory of the prosecuting State is required in the national legislation or case law of at least 16 States, including Argentina, Bosnia and

Herzegovina, Colombia, France, India, the Netherlands, the Philippines, Spain, Switzerland and the United States. However, there are other States whose national legislation and case law do not require this link, providing for the possibility of commencing proceedings against a suspected war criminal that is not present in the territory of the prosecuting States (Austria, Canada, Italy, Germany, Luxembourg, New Zealand and the United Kingdom).

137. Aside from requiring the presence of the accused in the territory of the prosecuting State, a number of other conditions have been attached in some cases to the exercise of universal jurisdiction, including, inter alia, prosecutorial discretion.[13]

138. ICRC recognizes that States may want to attach conditioning factors to the application of universal jurisdiction. However, it believes that, in each context, such conditioning factors must be aimed at increasing the effectiveness and predictability of universal jurisdiction and must not unnecessarily restrict the possibility of prosecuting suspected offenders.

139. Since its establishment in 1996, the Advisory Service on International Humanitarian Law of ICRC, in cooperation with various stakeholders, has placed a particular focus on encouraging States to establish proper sanctions for serious violations of international humanitarian law within their domestic legal framework in line with the requirements of the relevant treaties. It has also focused on providing legal advice, in particular by commenting on draft laws, organizing seminars and meetings of experts, compiling fact sheets and other specialized documents and collecting and supplying information on adopted laws and regulations and on the case law relating thereto.[14]

140. The effective protection of victims of armed conflict requires both preventive and enforcement measures. The enforcement of humanitarian law must be further advanced through the appropriate adoption of national legislation to allow prosecution of war crimes, with the appropriate jurisdictional framework. The principle of universal jurisdiction is part of this legal framework, a concept firmly rooted in humanitarian law. It remains critical in closing the impunity gap for all serious violations of international humanitarian law.

[13] More information on State practice can be found in the databases on national implementation of international humanitarian law and customary international humanitarian law, which may be consulted on the ICRC website (www.icrc.org). Information on relevant new criminal legislation and national case law is also contained in the biannual update of national implementation of international humanitarian law published by ICRC in the *International Review of the Red Cross*.

[14] This includes fact sheets on particular international humanitarian law topics, including universal jurisdiction (available on the ICRC website); reports of experts meetings and meetings of national committees on international humanitarian law; ratifications kits to facilitate State adherence to international humanitarian law treaties; model laws and guidelines; questionnaires listing obligations deriving from international humanitarian law instruments and other issues States should consider when enacting national law to implement international humanitarian law; *The Manual on Domestic Implementation of International Humanitarian Law*, a comprehensive guide to domestic implementation designed for policymakers, legislators and other stakeholders; and a database of national laws, judgments and customary international humanitarian law.

IV. Nature of the issue for discussion: specific comments by States

Argentina

141. There must be clear rules governing the application of universal jurisdiction in order to ensure its reasonable exercise, in particular in view of the "myths" and misinterpretations surrounding the concept. The working group of the Sixth Committee to be created pursuant to General Assembly resolution 65/33 should consider, inter alia (a) the concept of universal jurisdiction; (b) the conditions that must govern its exercise; and (c) its status within international law and the legislative and judicial practice of States.

142. The work to be undertaken should be conducted in stages, focusing first on clarifying the concept of universal jurisdiction, in particular distinguishing it from the principle of *aut dedere aut judicare*. While the work undertaken by the working group should recognize and explore the relationship between universal jurisdiction and other concepts, it should focus on the elements inherent in the principle of universal jurisdiction.

El Salvador

143. There are several issues closely linked to the principle of universal jurisdiction which, to date, have scarcely been discussed in the Sixth Committee:

(a) Little attention has been given to the principles that have the effect of limiting the right of a State to punish (*ius puniendi*) and which should guide the judgment of grave crimes that lead to the application of universal jurisdiction;

It would be necessary to consider a whole series of rights and guarantees that mark the limits of State power, regardless of where the trial is conducted, once the need to exercise universal jurisdiction in specific cases has already become apparent, addressing in that regard such aspects as the application of *ne bis in idem*, the recognition of the principle of human dignity, including the prohibition of discrimination, the prohibition of torture, and aspects concerning reparation measures;

(b) As undeniable as the grounds for the exercise of universal jurisdiction may be, such as the gravity of the crime and its international significance, any judgment would be incomplete, and its outcomes purely symbolic, if the direct or indirect victims of the given offence are forgotten. Such victims should be treated with humanity and respect for their dignity and human rights, and their families' physical and psychological well-being, privacy and security must be guaranteed;

(c) In view of the fact that many States concur in their designation of genocide, torture, slavery and crimes against humanity in general as offences subject to universal jurisdiction, in addition to providing adequate reparation to victims, it is also critically important to issue guarantees of non-repetition, clearly within the limits established by State sovereignty;

(d) It is important to develop a principle of universal jurisdiction that is in accordance with the guiding principles of the various branches of international law and to study, in this context, effective prevention, suppression and reparation

measures concerning the most serious crimes against humanity, which is the obligation of all States.

Italy

144. It seems particularly appropriate to clarify the principles that would govern the exercise of universal jurisdiction and thereby devise a framework of reference under international law, in order to specify under what conditions the State is internationally competent to investigate or prosecute extraterritorial offences.

145. Common principles will help national legislative bodies to enact universal jurisdiction; they will also help judges to apply such jurisdiction in a correct manner when prosecuting international crimes or making extradition decisions (including on competing jurisdictional claims). Such principles will also assist Governments that must decide whether to prosecute or to extradite or how to otherwise promote international criminal accountability.

Lebanon

146. Universal jurisdiction should not be in violation of national sovereignty but should play a complementary role. Jurisdiction belongs first and foremost to national courts, which should not be bound by the authority of any other party, except in cases where it is clear that a national judiciary is incapable or unwilling to conduct fair and credible legal proceedings.

147. Universal jurisdiction should be invoked only for the most heinous crimes that have been universally condemned by the international community and constitute flagrant violations of human rights.

148. For international justice to be served and for criminals to be prevented from evading punishment, international cooperation in the extradition of wanted persons should be reaffirmed and recourse to force in that regard should be prohibited.

Switzerland

149. Given its fundamentally legal nature and technical character, the consideration of the scope and application of universal jurisdiction should be entrusted to the International Law Commission. This would provide States with a better basis for discussion. The Commission is already considering another topic that is closely and inextricably linked to that of universal jurisdiction, namely the obligation to extradite or prosecute. This option is possible under resolution 65/33.

United Kingdom of Great Britain and Northern Ireland

150. It is premature to conclude that the time is ripe for the adoption of new international instruments on this issue. Nevertheless, the United Kingdom stands ready to contribute to further discussions on this topic in the Sixth Committee.

Slovakia

151. The multidimensional nature of universal jurisdiction means that due focus should be given to both its procedural elements and its scope *ratione materiae*. Moreover, due consideration should be given to the role of Article 103 of the Charter of the United Nations. Thus, any work on the principle of universal

jurisdiction should be realized in conformity with the principles and purposes of the Charter. This requires not only accepting the "universality" of jurisdiction but also reaching sufficient "universality" in the area of related legal norms regulating material aspects of the issue.

152. The outcome of the work should not impair the inherent right of States to individual or collective self-defence in terms of Article 51 of the Charter or the right to resort to other circumstances precluding responsibility for an internationally wrongful act, in accordance with the Articles on the responsibility of States for internationally wrongful acts.

153. The normative quality of the legal rules related to the principle of universal jurisdiction is obviously an important element that should be taken into consideration. A clear ranking of all related legal rules (both national and international) would help to prevent potential disputes with regard to the priority of different categories of legal rules, for example the legal rules governing the obligation of a State to protect its citizens through diplomatic and consular law on the one hand and the legal right of another State to prosecute the citizens of the former State by implementing the principle of universal jurisdiction on the other hand.

154. The work should also take into consideration issues related to legal cooperation among national and international courts, including matters concerning the collection of evidence.

155. Universal jurisdiction should serve as a subsidiary means and should be applied only when national systems fail to prosecute and punish the offender.

156. It is necessary to adopt a balanced legal instrument that creates conditions for the effective implementation and use of universal jurisdiction within the international community. This would preclude the adoption of rules regulating such issues as immunity, aspects of amnesty or general pardon, negative prescriptions and statute-barred cases or expiration of rights or time limits, while ensuring sufficient guarantees for accused persons and addressing in particular procedural guarantees in proceedings where the accused person is not present, cases in which to apply *ne bis in idem*, as well as the right to appeal, and guarantees related to the transfer of persons, the prevention of capital punishment or inhuman treatment.

African Union

157. There is a need to agree on the extent and applicability of universal jurisdiction within an all-inclusive multilateral arrangement, such as the United Nations.

158. At the sixty-sixth session of the General Assembly, States should attempt to define universal jurisdiction in terms of which crimes fall under its application. Such crimes should be restricted to piracy, slavery, crimes against humanity, war crimes, genocide and torture, and the application of universal jurisdiction should be invoked only under exceptional circumstances and when it has been recognized that there are no other means of bringing criminal action against the alleged perpetrators.

159. For universal jurisdiction to apply, a State's competence to establish its jurisdiction and prosecute an individual must have a solid basis in international law in the form of a treaty. Universal jurisdiction cannot be based exclusively on the

domestic legislation of the State seeking to exercise it, unless such jurisdiction is also based on a source of international law.

160. When exercising universal jurisdiction over serious crimes of international concern, States should bear in mind the need to avoid impairing friendly relations.

161. When a State wishes to claim the application of universal jurisdiction, it might first obtain the consent of the State in which the alleged violation took place and of the State of nationality of the alleged perpetrator.

162. In prosecuting serious crimes of international concern, States should, as a matter of policy, accord priority to territoriality as a basis of jurisdiction, since such crimes, while injuring the international community as a whole by infringing universal values, primarily injure the community where they have been perpetrated and violate not only the rights of the victims but also the general demand for order and security in that community. In addition, it is within the territory of the State of alleged commission that the bulk of the evidence will usually be found.

163. Given the grave nature of serious crimes of international concern, Member States may wish to consider legislating to specify an appropriate level of court at which proceedings in respect of such crimes must be instituted. They might also envisage providing specialist training in the prosecution and adjudication of such crimes.

164. All Member States should respect international law and the immunity of State officials in particular when applying universal jurisdiction.

165. When considering exercising universal jurisdiction over persons suspected of serious crimes of international concern, national criminal justice authorities are legally bound to take into account all the immunities to which foreign State officials may be entitled under international law and are consequently obliged to refrain from prosecuting those officials.

166. Where national criminal justice authorities have initiated investigations and collected compelling evidence of serious crimes of international concern allegedly committed abroad against non-nationals by non-nationals, and where the suspect is a foreign State official exercising a representative function on behalf of his or her State, such authorities should consider refraining from taking steps that might publicly and unduly expose the suspects, thereby discrediting and stigmatizing them, curtailing their right to be presumed innocent until found guilty by a court of law and hampering the discharge of their official function.

167. Where national criminal justice authorities considering exercising universal jurisdiction believe that the territorial State or the State of nationality of the suspect or victims is able and willing to bring the suspect to trial in accordance with international human rights standards, they should confidentially disclose the indictment (or any other instrument containing the charges), along with all the evidentiary material collected, to the criminal justice authorities of the relevant State, together with a request that these authorities investigate the alleged crimes and, where the evidence calls for such action, prosecute the suspect. However, where the national criminal justice authorities considering exercising universal jurisdiction have serious reasons to believe that the territorial State and the State of nationality of the suspect or the victims are manifestly unwilling or unable to prosecute the suspect, and the suspect is a foreign State official exercising a

representative function on behalf of his or her State, they should seek and issue a summons to appear or equivalent measure, rather than an arrest warrant, to enable the suspect to appear before the court and to produce, with the assistance of counsel, any exculpatory evidence in his or her possession.

168. The United Nations should establish an international commission on universal jurisdiction as a subsidiary body of the General Assembly to serve as a regulatory body on the exercise of universal jurisdiction. This body should check the validity, legality and factual basis of indictments issued by judges in individual States and warrants before they can be approved for execution outside their own territories.

169. All Member States should impose a moratorium on the execution of arrest warrants issued against State officials of certain African Union member States until all the legal and political issues have been discussed exhaustively at the level of the General Assembly and agreement reached.

170. Taking into account the decision of the African Union Assembly of Heads of State and Government in the regard, the challenges that have been made against the indictments and the serious negative consequences posed by the indictments, it is necessary to find a lasting solution to this problem and in particular to ensure that the said warrants are withdrawn and are not executable in any country.

Table 1

List of crimes mentioned in the comments by Governments, concerning which universal jurisdiction (including other bases of jurisdiction) is established by their codes

Crime		*State*
Piracy		Cyprus, Qatar, Spain
Slavery and servitude		Colombia
Fiscal offences	Forgery and fraudulent alteration of money, sale or uttering counterfeited and altered currency, banknotes, shares and securities	Azerbaijan, Bosnia and Herzegovina, Colombia, Cyprus, Lithuania, Paraguay, Philippines, Slovakia
	Manufacturing and possession of forgery trademarks, tools, measures, weights and equivalent objects	Bosnia and Herzegovina, Slovakia
	Manufacturing and possession of instruments for counterfeiting and forgery; forgery, fraudulent alteration and illicit manufacturing of duty stamps, postage stamps, stickers and postmarks; forgery and fraudulent alteration of control technical measures for labelling goods	Slovakia

Crime	*State*
Genocide	Lithuania,[a] Colombia, Paraguay, Slovakia, Spain
Crimes against humanity	Azerbaijan, Spain
Endangering peace	Slovakia
Crimes against peace	Azerbaijan
Aggression	Lithuania[a]
Military hostility	Colombia
Instigation to war	Colombia
Killing of persons protected under international law	Lithuania[a]
Treatment of persons prohibited under international law	Lithuania[a]
War crimes:	Azerbaijan, Spain (included through the reference to international humanitarian law treaties)
Causing bodily harm to, torture or other inhuman treatment of persons protected under international humanitarian law	Lithuania[a]
War atrocities	Slovakia
Attack against sites and facilities that contain dangerous forces	Colombia
Forcible use of civilians or prisoners of war in the armed forces of the enemy	Lithuania[a]
Destruction of protected objects or plunder of national valuable properties/ plundering of a battlefield	Lithuania,[a] Colombia
Destruction or unlawful use of cultural goods and places of worship	Colombia
Lawlessness in wartime	Slovakia
Delay in repatriation of prisoners of war	Lithuania
Delay in the release of interned civilians or impending repatriation of civilians	Lithuania[a]
Persecution of civilians	Slovakia
Perfidy	Colombia

Crime	State
Unlawful use of the emblem of the Red Cross, Red Crescent, United Nations or another universally recognized emblem (sign) or designation	Lithuania,[a] Slovakia
Failure to take measures to protect the civilian population	Colombia
Deportation of civilians of an occupied State or transferring of the civilian population of an occupying State	Lithuania[a]
Deportation, expulsion, transfer or displacement by force of civilian population	Colombia
Prohibited military attack	Lithuania[a]
Acts of terrorism	Colombia
Use of prohibited means and methods of warfare	Lithuania,[a] Colombia, Slovakia
Forced combat	Colombia
Marauding	Lithuania[a]
Plundering in the war area	Slovakia
Homicide of a protected person	Colombia
Attacks on subsistence and devastation	Colombia
Failure to take emergency and humanitarian assistance measures	Colombia
Obstruction of health-related and humanitarian tasks	Colombia
Destruction of health-related property or facilities	Colombia
Injuries to persons protected by international humanitarian law	Colombia
Retaliation	Colombia
Unlawful recruitment	Colombia
Torture of protected persons	Colombia
Rape of a protected person	Colombia
Sexual assault against a protected person	Colombia

Crime		*State*
	Commander's negligent performance of his duty	Lithuania[a]
	Inhuman and degrading treatment and biological experiments on a protected person	Colombia
Torture		Azerbaijan, Colombia
	Other inhuman and cruel treatment or punishment	Colombia
	Cruelty	Slovakia
Acts of racial discrimination		Colombia
Acts of barbarism		Colombia
Unlawful possession of nuclear or radioactive materials or other sources of ionizing radiation		Lithuania
Threat to use or otherwise influence or unlawfully acquire nuclear or radioactive materials or other sources ionizing radiation		Lithuania
Violation of the regulations governing lawful possession of nuclear or radioactive materials or other sources of ionizing radiation		Lithuania
Unlawful possession of highly active or toxic substances		Lithuania
Manufacturing or unlawful possession of biological weapons		Lithuania
Violation of regulations governing lawful possession of psychotropic, highly active or toxic substances		Lithuania
Illicit manufacturing and possession of nuclear materials, radioactive substances, hazardous chemicals and hazardous biological agents and toxins		Slovakia
Offences against international security or State security:		
	Destructive actions, ssabotage	Slovakia
	Espionage	Slovakia, Colombia
	Treason	Cyprus
	Diplomatic treason	Colombia
	Offences against the existence or security of the State or the constitutional order/plotting against the State, the constitutional regime or the economic and social order	Cyprus, Slovakia, Colombia

Crime		*State*
	Offences involving explosives	Paraguay
	Undermining of national integrity	Colombia
	Acts against national defence	Colombia
Offences against the personality of the State, State symbols or State representative:		
	Counterfeiting and altering a public instrument, official seal, official emblem and official mark	Slovakia
	Misuse of national symbols	Slovakia
	Jeopardizing the safety of confidential and restricted information	Slovakia
	A criminal offence against an official or responsible person in government institutions, in relation to his office/assaulting a public authority or public official	Bosnia and Herzegovina, Slovakia
	Crimes against the integrity of the State	Bosnia and Herzegovina
	Commission, by public officers and employees, of an offence in the exercise of their functions	Philippines
Terrorism-related offences:		
	Terrorism/terror and certain forms of participation therein	Azerbaijan, Colombia, Lithuania, Qatar, Slovakia, Spain
	Establishing, masterminding and supporting a terrorist group	Slovakia
	Financing of terrorism	Azerbaijan, Colombia
	Administering resources linked to terrorist activities	Colombia
	Hijacking/unlawful seizure of aircraft	Azerbaijan, Lithuania, Spain
	Maritime piracy	Azerbaijan
	Hostage-taking	Azerbaijan, Colombia, Lithuania

Crime		*State*
	Terrorism-related attacks on internationally protected persons or organizations/aggravating circumstances of the crime of homicide of an internationally protected person	Azerbaijan, Colombia
	Violence at airports, on ships and on fixed platforms/attacks on civilian air and sea traffic	Lithuania, Paraguay
	Crimes involving radioactive materials	Azerbaijan
Money/property-laundering		Lithuania, Colombia
Narcotic drugs and psychotropic substances and drug-related crimes		
	Unlawful possession of narcotic or psychotropic substances for purposes other than distribution	Lithuania
	Illicit trafficking in narcotic drugs or psychotropic substances/illicit manufacturing and possession of narcotic and psychotropic substances, poisons or precursors and trafficking therein	Azerbaijan, Colombia, Cyprus, Paraguay, Slovakia, Spain
	Unlawful possession of narcotic or psychotropic substances for the purpose of distribution or unlawful possession of a large quantity of narcotic or psychotropic substances	Lithuania
	Distribution of narcotic or psychotropic substances among minors	Lithuania
	Production of installations for the production of narcotic or psychotropic substances or development of technologies or specifications for the production of narcotic or psychotropic substances	Lithuania
	Theft, extortion or other unlawful seizure of narcotic or psychotropic substances	Lithuania
	Trafficking in drugs	Qatar

Crime		*State*
	Inducing the use of narcotic or psychotropic substances	Lithuania
	Illegal cultivation of poppies or hemp; unlawful possession of category I precursors of narcotic or psychotropic substances	Lithuania
Offences against morality and exploitation:		
	Human trafficking/trafficking or smuggling of persons, including (migrant) workers	Azerbaijan, Colombia, Lithuania, Paraguay, Spain
	Trafficking in persons	Qatar
	Purchase and sale of minors/ offences against minors	Lithuania, Switzerland
	Crimes related to the prostitution or corruption of minors and legally incompetent persons	Spain
	Forced prostitution or sexual slavery	Colombia
	Crimes relating to female genital mutilation	Spain (if the perpetrators are present in Spain)
Ecocide		Colombia
Violation of regulations governing environmental protection or the use of natural resources		Lithuania
Violation of borders for the purpose of exploiting natural resources		Colombia
Illicit trade in the substances depleting the ozone layer		Lithuania
Destruction or devastation of protected areas or protected natural objects		Lithuania
Illegal hunting or fishing or other use of wild fauna resources		Lithuania
Unlawful picking, destruction, handling or other possession of protected wild flora, fungi or parts thereof		Lithuania
Facilitation of illegal migration		Slovakia
Forced displacement		Colombia
Enforced disappearance		Colombia

[a] These crimes are not subject to the statute of limitations.

Table 2
Specific legislation relevant to the subject, based on information submitted by Governments

Category	*Legislation*	*Country*
Piracy	Merchant Shipping and Maritime Security Act 1997 (see section 26 and schedule 5, incorporating the definition of piracy in the United Nations Convention on the Law of the Sea)	United Kingdom (Piracy is a criminal offence at common law throughout the United Kingdom and prosecution for piracy can take place regardless of any national nexus)
Genocide	Law ratifying the Rome Statute of the International Criminal Court (Law 8 (III)/2002 as amended by Law 23 (III)/2006)	Cyprus
	Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, signed into law on 11 December 2009	Philippines
	Genocide Act, 1964	Sweden
Torture	Criminal Justice Act 1988 (Sect. 134 provides for universal jurisdiction over the offence of torture)	United Kingdom
Crimes against humanity	Law ratifying the Rome Statute of the International Criminal Court (Law 8 (III)/2002 as amended by Law 23 (III)/2006)	Cyprus
	Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, signed into law on 11 December 2009	Philippines
War crimes	Geneva Conventions Act [Cap 39:03]	Botswana
	(Scheduled crimes under section 3 include wilful killing, torture or inhumane treatment, biological experiments, wilfully causing great suffering or serious injury to body and health, compelling a prisoner of war to serve in the forces of the hostile power, wilfully depriving a prisoner of war of the right to a fair and regular trial, taking hostages and extensive destruction and appropriation of property)	

Category	*Legislation*	*Country*
	Law ratifying the Rome Statute of the International Criminal Court (Law 8 (III)/2002 as amended by Law 23 (III)/2006)	Cyprus
	Law ratifying the Geneva Conventions (Law 40 (110/1966), (grave breaches of the four Geneva Conventions (articles 50, 51, 130 and 147 respectively)	Cyprus
	Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, signed into law on 11 December 2009	Philippines
	The Geneva Conventions Act 1957, as amended (gives courts jurisdiction over grave breaches of the four Geneva Conventions of 1949 and Additional Protocol I (The Act applies to a person of any nationality acting in the United Kingdom or elsewhere. It was further amended in 2009 to include grave breaches of Additional Protocol III in respect of the perfidious use of certain emblems)	United Kingdom
	The War Crimes Act 1991 (provides jurisdiction over war crimes amounting to murder, manslaughter or culpable homicide committed in Germany or German occupied territory during the Second World War by any person, irrespective of their nationality at the time of the crime, who was, or who subsequently became, a British citizen or resident in the United Kingdom)	United Kingdom
Terrorism-related offences	Law extending the jurisdiction of domestic courts for the purposes of trying certain terrorist offences (Law 9/79)	Cyprus
	(Offences contained in article 1 of the European Convention on the Suppression of Terrorism of 1977 (i.e. offences within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at	

Category	*Legislation*	*Country*
	The Hague on 16 December 1970; offences within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; serious offences involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; offences involving kidnapping, the taking of a hostage or serious unlawful detention; offences involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; attempts to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence)	
	Terrorism Act 2000. Part VI provides for universal jurisdiction over terrorist bombings (implementing the International Convention for the Suppression of Terrorist Bombings (1997) and terrorism financing offences (giving effect to the International Convention for the Suppression of the Financing of Terrorism (1999))	United Kingdom
	Aviation and Security Act 1982. Part I and II provide for universal jurisdiction over the crime of hijacking an aircraft or ship (giving effect to the Convention for the Suppression of Unlawful Seizure of Aircraft (1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988))	United Kingdom
	Aviation and Maritime Security Act 1990. Part I provides for universal jurisdiction over acts endangering the safety of an aircraft (giving effect to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), as well as offences against the safety of ships and	United Kingdom

Category	*Legislation*	*Country*
	fixed platforms (giving effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf))	
	Taking of Hostages Act 1982. Section 1 provides for universal jurisdiction over hostage-taking in order to compel a State, international governmental organization or person to do or abstain from doing any act (giving effect to the International Convention against the Taking of Hostages (1979))	United Kingdom
	Nuclear Materials (Offences) Act 1983 (provides for universal jurisdiction in respect of the misuse of nuclear material (giving effect to the Convention on the Physical Protection of Nuclear Material)	United Kingdom
	Anti-terrorism, Crime and Security Act 2000 (establishes universal jurisdiction in respect of the offence of knowingly causing a nuclear explosion without authorization)	United Kingdom
	Internationally Protected Persons Act 1978. Section 1 provides for universal jurisdiction in respect of attacks and threats of attacks on internationally protected persons (giving effect to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973))	United Kingdom
Implementation of the International Criminal Court and other tribunals	Act No. 1.663/0 approving the Rome Statute of the International Criminal Court	Paraguay
	The International Criminal Court Act 2001 (provides for jurisdiction over genocide, crimes against humanity and war crimes when committed outside the United Kingdom by United Kingdom	United Kingdom

Category	*Legislation*	*Country*
	nationals, residents or persons subject to United Kingdom service jurisdiction, including persons who were not United Kingdom residents at the time of the offence but who subsequently become United Kingdom residents and are resident at the time proceedings are brought. Following an amendment in 2009, proceedings may be brought, subject to certain conditions, in relation to offences committed on or after 1 January 1991. The International Criminal Court (Scotland) Act 2001 makes equivalent provision in respect of Scotland.[b])	
Miscellaneous	Merchant Shipping Act 1995 (Other miscellaneous offences, universal jurisdiction and extraterritorial jurisdiction in the United Kingdom)	United Kingdom

[b] For instance, under the Geneva Conventions Act 1957, the Internationally Protected Persons Act 1978, the Aviation and Security Act 1982, the Taking of Hostages Act 1982, the Nuclear Materials (Offences) Act 1983, the Criminal Justice Act 1988, the Aviation and Maritime Security Act 1990, the War Crimes Act 1991, the Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2000, the International Criminal Court Act 2001, the International Criminal Court (Scotland) Act 2001, a prosecution for an offence committed outside the United Kingdom may proceed in England and Wales or Northern Ireland only with the consent of the Attorney-General or Advocate-General for Northern Ireland, while in Scotland all prosecutions on indictment are done in the name of the Lord Advocate.

Table 3

Relevant treaties which were referred to by Governments, including treaties containing *aut dedere aut judicare* provisions

A. Universal instruments

Counterfeiting	International Convention for the Suppression of Counterfeiting Currency and Protocol	Lithuania
Slavery and servitude	Slavery Convention 1926	Colombia, Slovakia
	Abolition of Forced Labour Convention, 1957	Colombia
Piracy	United Nations Convention on the Law of the Sea, 1982	Botswana

International humanitarian law	Geneva Conventions of 1949	Botswana, Lithuania, Slovakia
	Additional Protocols of 1977	
	Protocol I	Lithuania, Slovakia
	Protocol II	Lithuania, Slovakia
	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (and protocols)	Lithuania
	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction	Lithuania
	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction	Lithuania
Genocide	Convention on the Prevention and Punishment of the Crime of Genocide, 1948	Lithuania, Slovakia
International criminal law	Rome Statute of the International Criminal Court, 1998	Botswana, Lithuania, Paraguay
Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Botswana, Colombia, Lithuania, Slovakia
Apartheid	International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973	Slovakia
Acts of terrorism	Convention for the Suppression of Unlawful Seizure of Aircraft, 1970	Lithuania, Philippines
	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971	Philippines
	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988	Philippines

	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988	Lithuania, Philippines
	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988	Lithuania, Philippines
	Convention on the Physical Protection of Nuclear Material, 1980	Lithuania, Philippines
	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973	Philippines
	International Convention against the Taking of Hostages, 1979	Lithuania, Philippines
	International Convention for the Suppression of Terrorist Bombings, 1997	Botswana, Lithuania, Philippines
	International Convention for the Suppression of the Financing of Terrorism, 1999	Botswana, Lithuania, Philippines
	International Convention for the Suppression of Acts of Nuclear Terrorism, 2005	Philippines
Narcotic drugs and psychotropic substances	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	Lithuania
Corruption and transnational organized crime	United Nations Convention against Transnational Organized Crime, 2000	Colombia
	United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, 2000	Colombia, Lithuania
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000	Lithuania

Enforced disappearances	International Convention for the Protection of All Persons from Enforced Disappearance, 2006	Colombia (signatory)
	Vienna Convention for the Protection of the Ozone Layer, 1985	Lithuania
Non-applicability of the statute of limitations	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968	Lithuania
General	Charter of the United Nations	Lithuania

Note: In some situations, references were made to various European Union framework decisions and directives (Lithuania).

B. Regional instruments

Terrorism and money-laundering	Organization of African Unity Convention on the Prevention and Combating of Terrorism, 1999	Botswana
	European Convention on the Suppression of Terrorism, 1977	Slovakia
	ASEAN Convention on Counter-Terrorism, 2007	Philippines
Extradition and mutual assistance	European Convention on the Transfer of Proceedings in Criminal Matters, 1972	Slovakia
	European Convention on Extradition, 1957	Slovakia
	Convention on the Transfer of Sentenced Persons, 1983	Slovakia
	European Convention on Mutual Assistance in Criminal Matters, 1959, and its Additional Protocol of 1978	Slovakia

C. Bilateral instruments

Extradition and mutual assistance in criminal matters	Bilateral agreements on extradition and on legal assistance in criminal matters were also mentioned.	(Slovakia was a party to several bilateral treaties containing the principle *aut dedere aut judicare* as an expression of subsidiary essence of the universal jurisdiction.)

	(Paraguay signed extradition treaties with virtually all the countries of the Americas and with many European and Asian countries. The *aut dedere aut judicare* (extradite or prosecute) principle is established in these instruments.)